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May 12, 1999

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AUG 18 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Room TWB204
445 12th Street, SW
Washington, DC 20554

EX PARTE OR LATE FILED

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Ex Parte
Second Application by BellSouth Telecommunications, Inc. and BellSouth Long
Distance, Inc. for Provisioning of In-Region, interLATA Service in Louisiana, CC
Docket No. 98-121

Application by Ameritech Michigan Pursuant to Section 271 of the
Telecommunications Act of 1996 to Provide In-Region, interLATA Service in
Michigan, CC Docket No. 97-137

Dear Ms. Roman Salas:

On Tuesday August 17, 1999, Harry Davidow, Ray Crafton, Rich Rubin, and I of AT&T met with Andrea Kearney, Jon Reel, Claudia Pabo, Jessica Rosenworcel, Alex Belinfante, Michelle Carey, Sanford Williams, Doug Everette, Raj Kannan, Daniel Shiman, Johanna Mikes and John Stanley of the Common Carrier Bureau. The purpose of this meeting was to update the Staff on the Bell Atlantic New York State 271 proceeding and to summarize recent carrier-to-carrier performance data, performance data related to AT&T's New York UNE-P testing, and issues related to recent Hot Cut provisioning by Bell Atlantic. Attached are copies of materials distributed and used during the meeting.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(2) of the Commission's rules.

Sincerely,

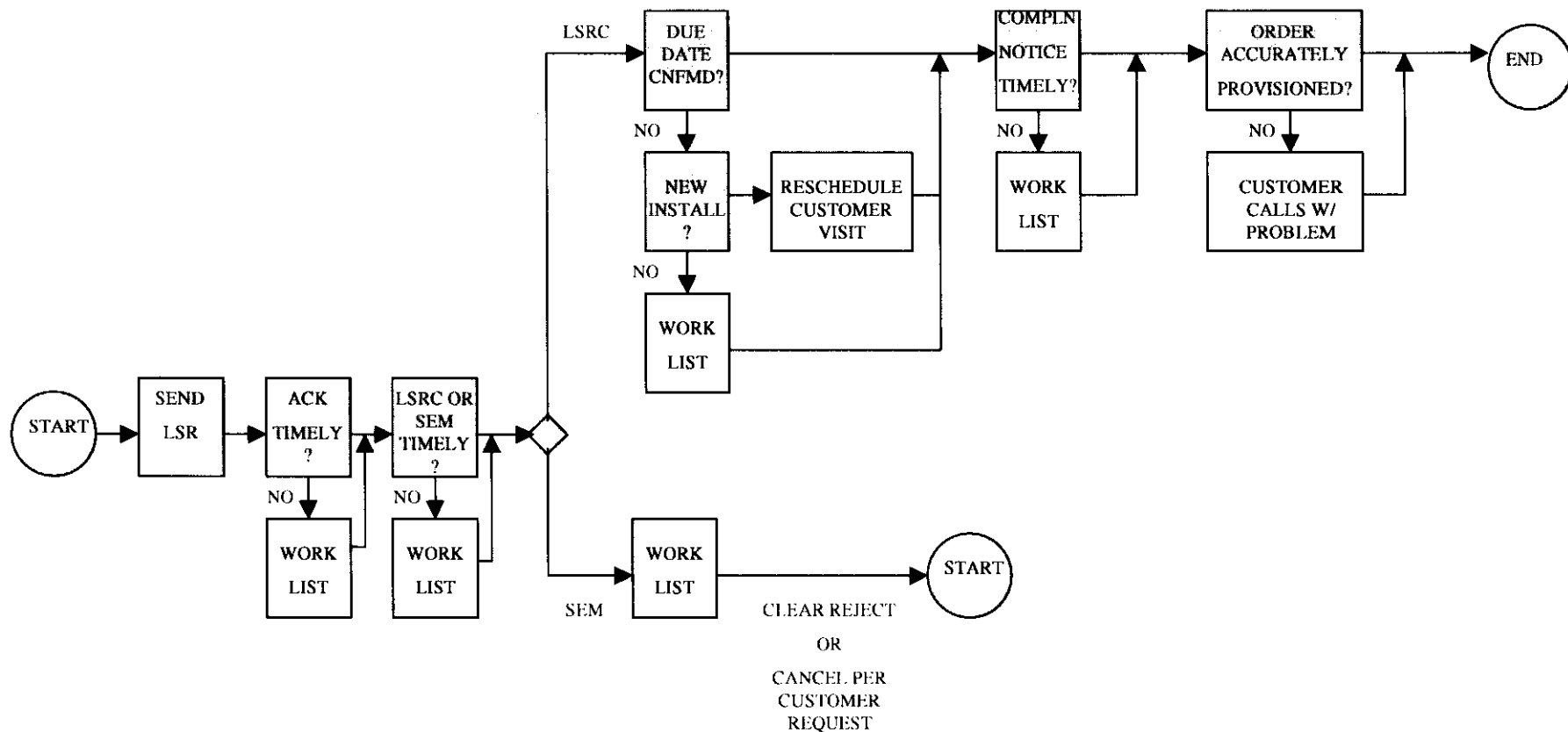
No. of Copies rec'd 0+3
List ABCDE

cc: A. Kearney J. Reel
 A. Belinfante M. Carey
 J. Rosenworcel S. Williams
 D. Everette R. Kannan
 J. Stanley J. Mikes
 C. Pabo D. Shiman

SUMMARY

- Serious Gaps In Current NY Carrier-To-Carrier Metrics Will Result In
 - Poorer Customer Service
 - More Customers Receiving Back Billing
 - More Dissatisfied Customers
 - Higher CLEC Order Management Costs
- Too Many CLEC Customers Are At Risk Of Entering A 30-Day Backlog Due To
 - Spurious BA Standard Error Messages
 - Very Poor BA Help Desk Performance

LOCAL ORDERING & PROVISIONING COST OF QUALITY MODEL

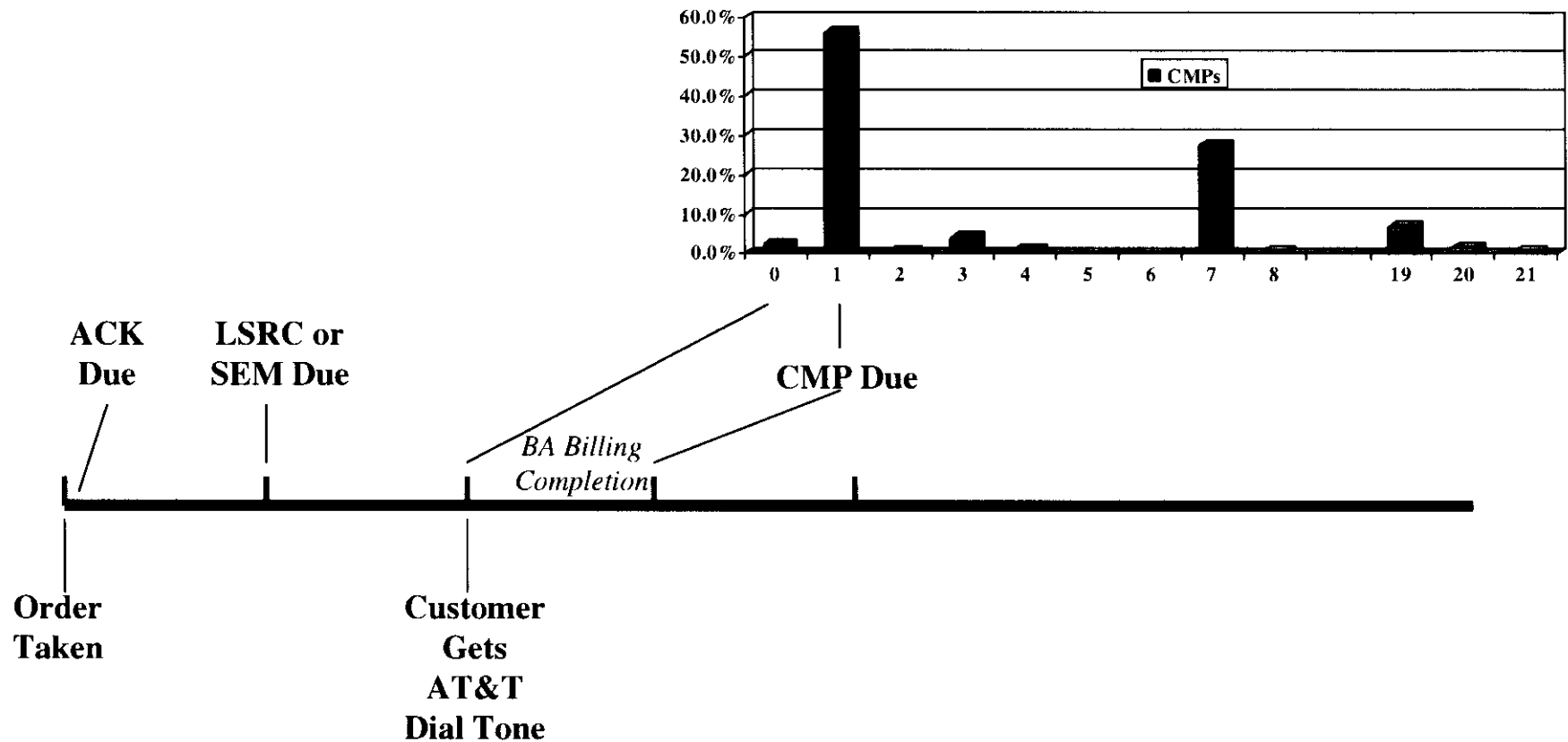


LSR Local Service Request (aka Order)
 LSRC Local Service Request Confirmation (aka Confirmation)
 SEM Standard Error Message (aka Reject)

RGC
 6-30-99

AT&T PROPRIETARY (RESTRICTED)

Incomplete / Delayed BA Responses Place Customer Service At Risk and Increase CLEC Costs...



•What's the status of my order?

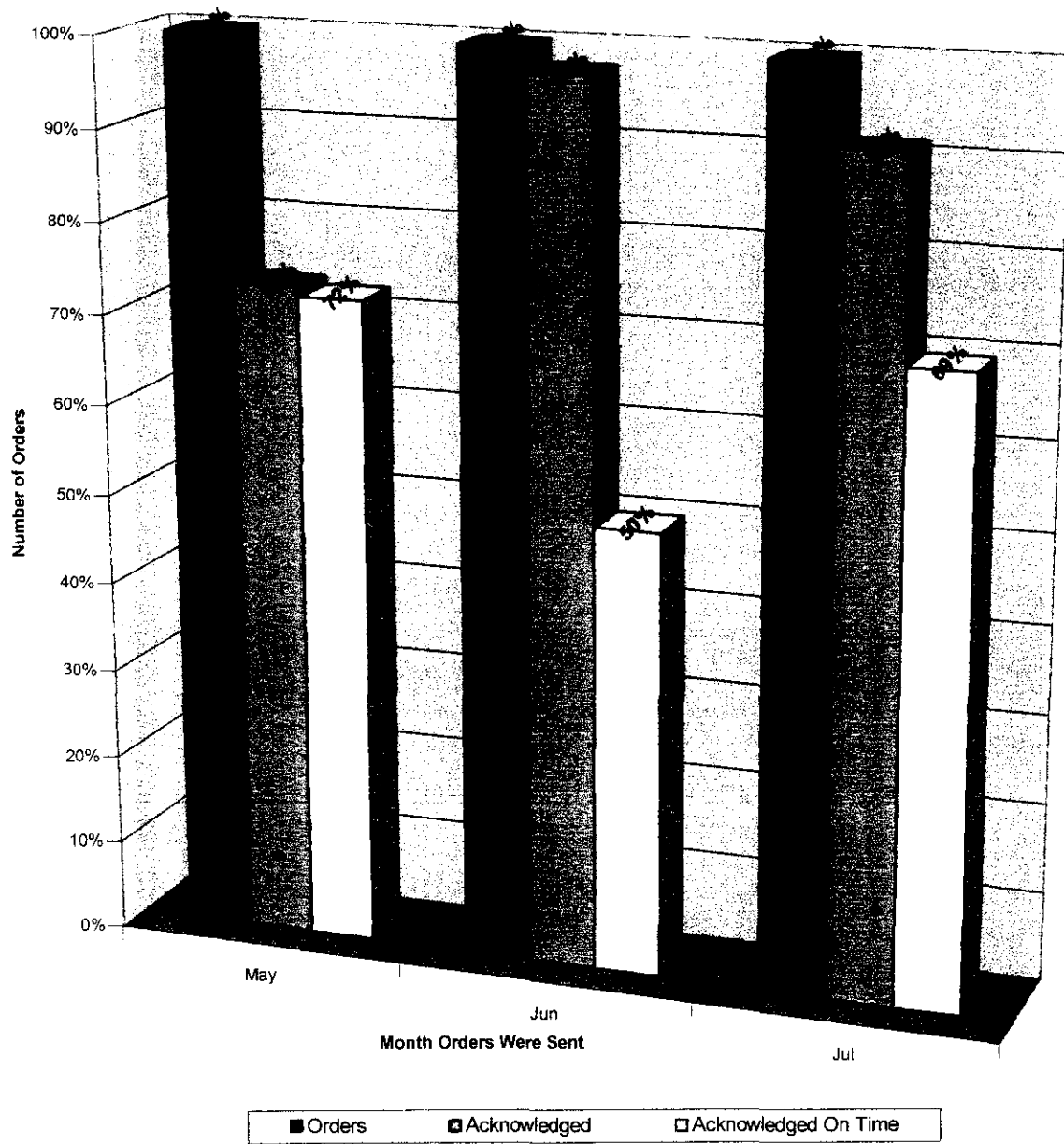
•I need to change or cancel my order...

•I have a problem with my service...

•I need to change my service...

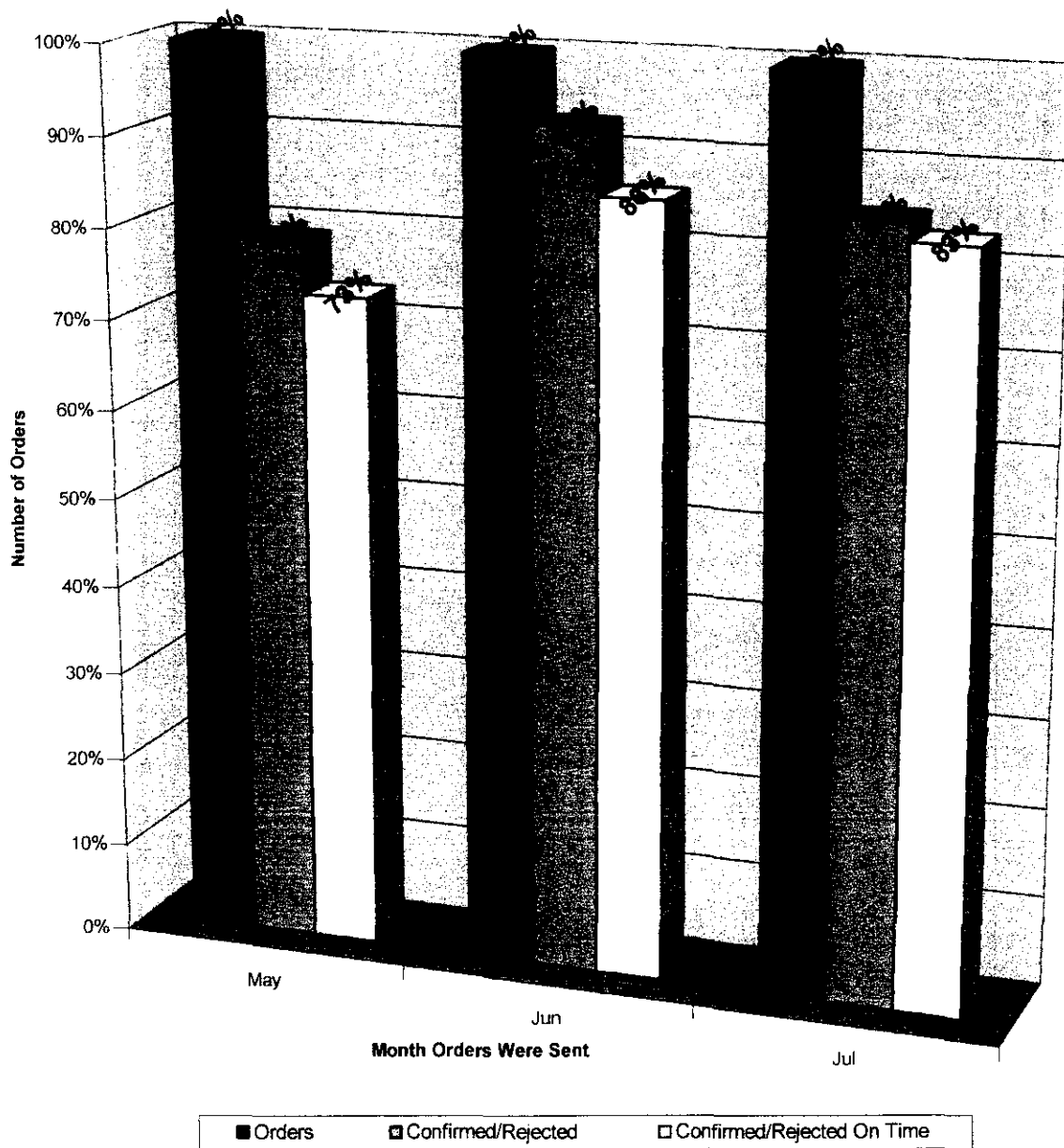
•I have an issue with my bill...

Acknowledgment Timeliness



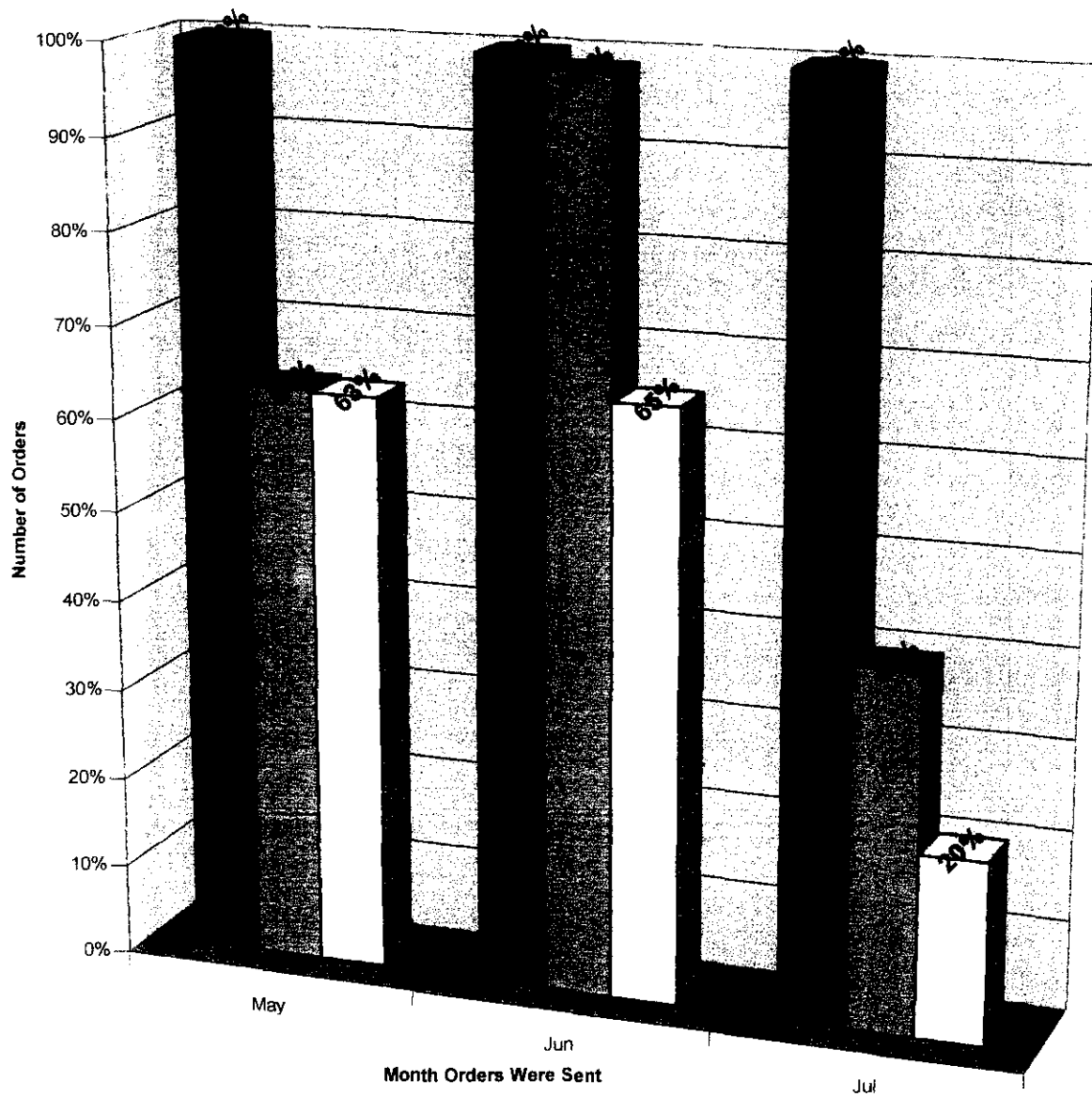
Sent Month	Orders	Acknowledged	Acknowledged On Time
May	967	708	699
Jun	1365	1332	679
Jul	1793	1640	1246

Confirmation and Rejection Timeliness



Sent Month	Orders	Confirmed/Rejected	Confirmed/Rejected On Time
May	967	762	708
Jun	1365	1268	1171
Jul	1793	1525	1488

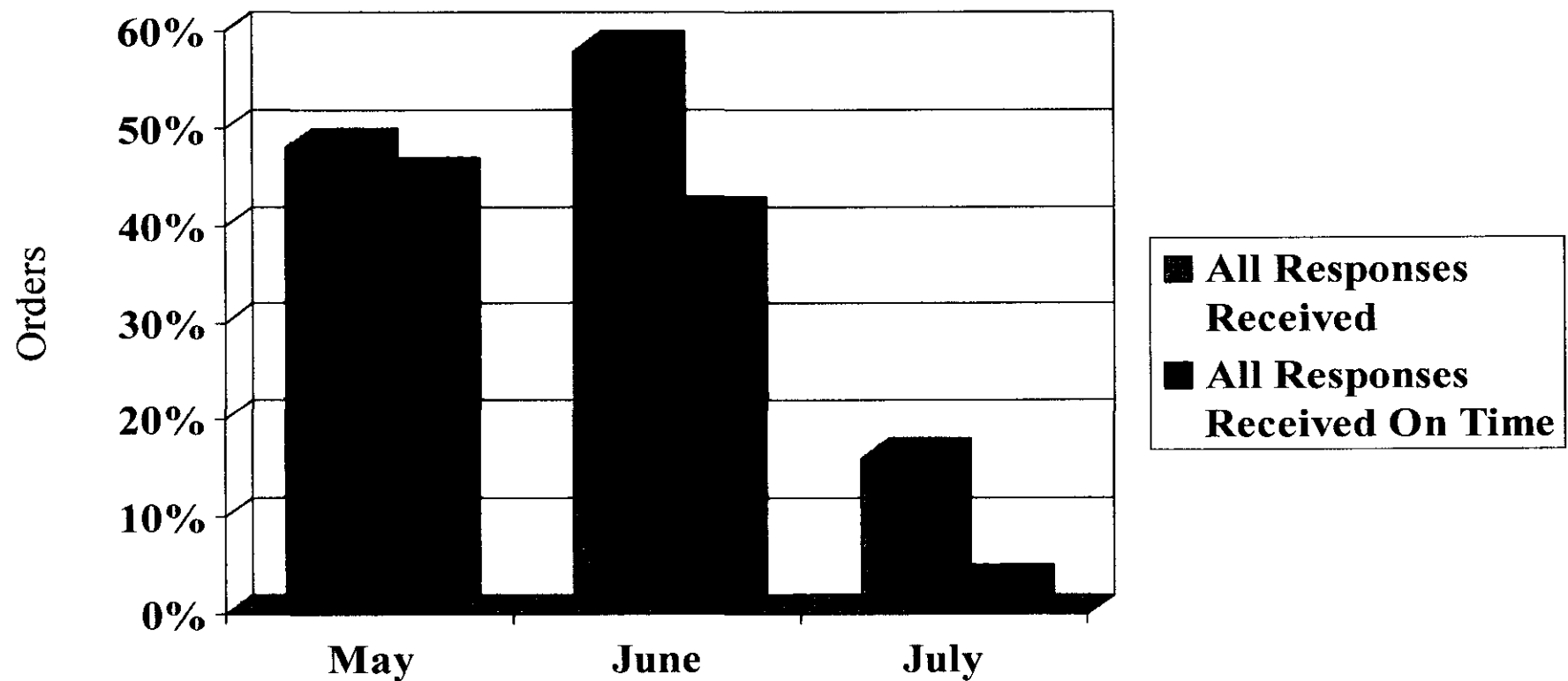
Completion Timeliness



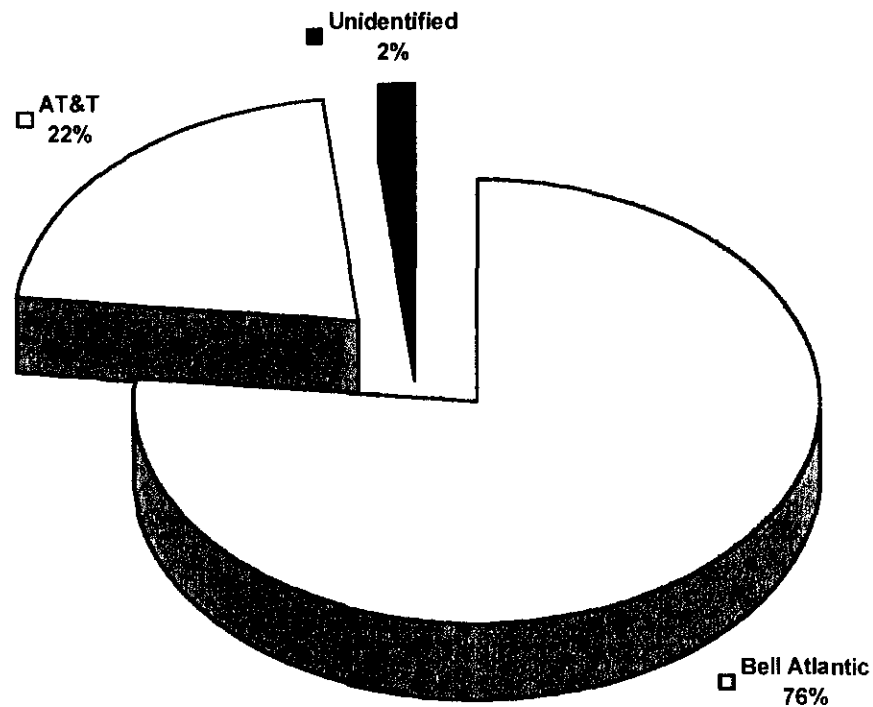
■ Eligible to Complete ■ Completed □ Completed On Time

Sent Month	Eligible to Complete	Completed	Completed On Time
May	608	387	385
Jun	972	959	632
Jul	1018	403	205

A CLEC Cannot Provide Good Customer Service When Bell Atlantic Does Not Furnish Responses To Electronic Orders That Are Complete and Timely

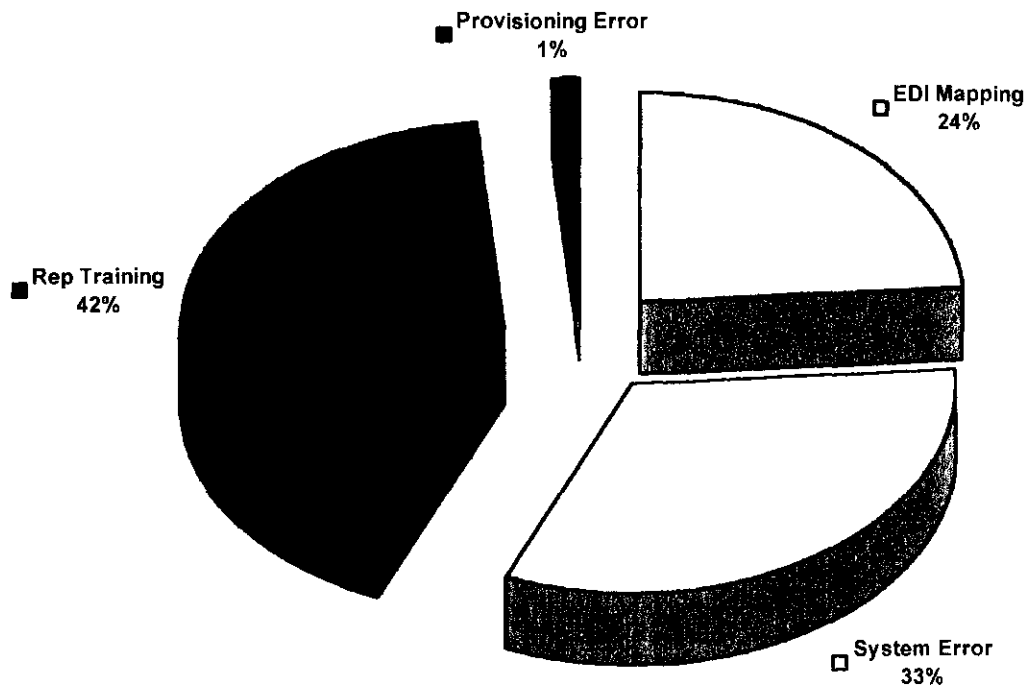


AT&T Friendly Test Error Code Analysis



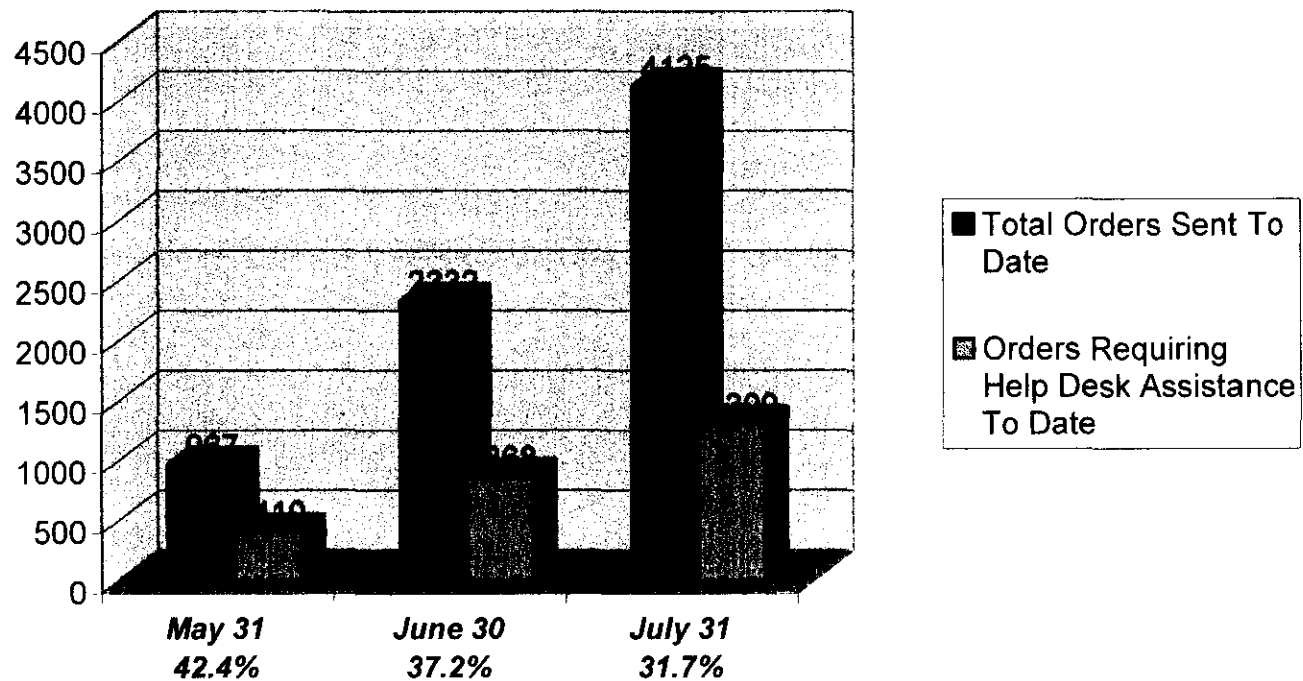
	Bell Atlantic	AT&T	Unidentified	Total
Count	934	266	19	1219
Percentage	76.62%	21.82%	1.56%	100.00%

AT&T Friendly Test Bell Atlantic Error Type Analysis

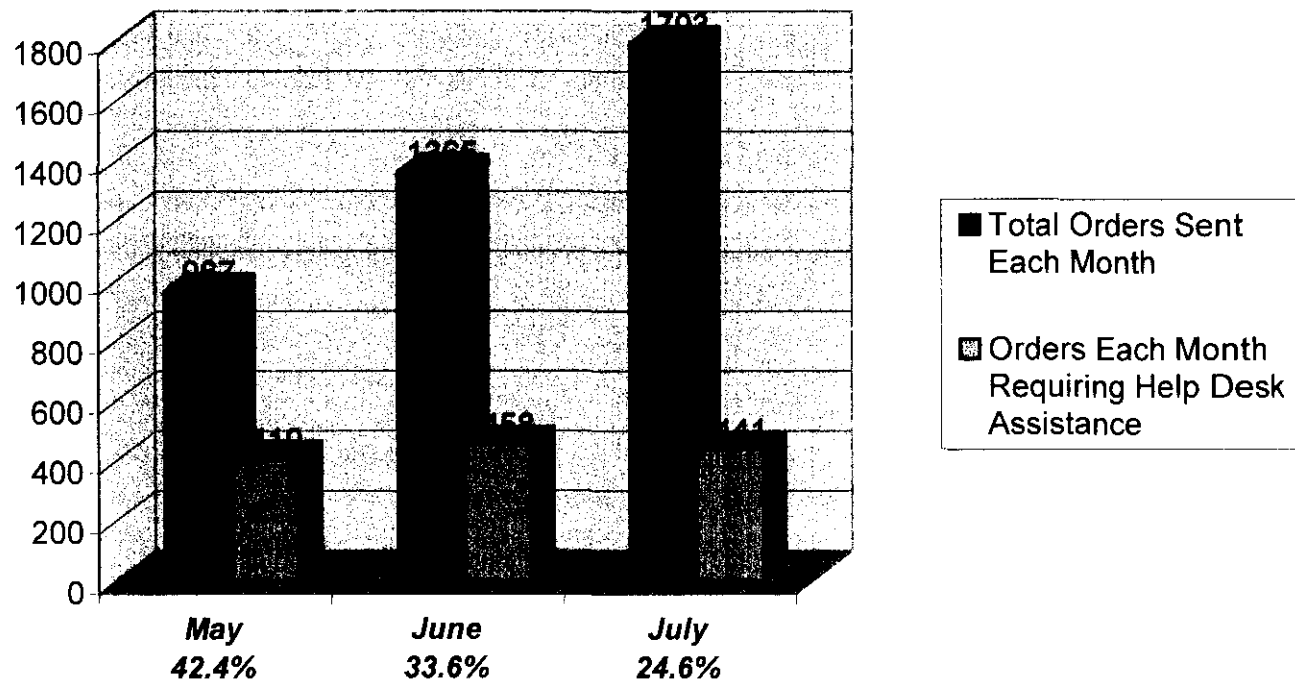


	EDI Mapping	System Error	Rep Training	Provisioning Error	Total
Count	222	304	396	12	934
Percentage	23.77%	32.55%	42.40%	1.28%	100.00%

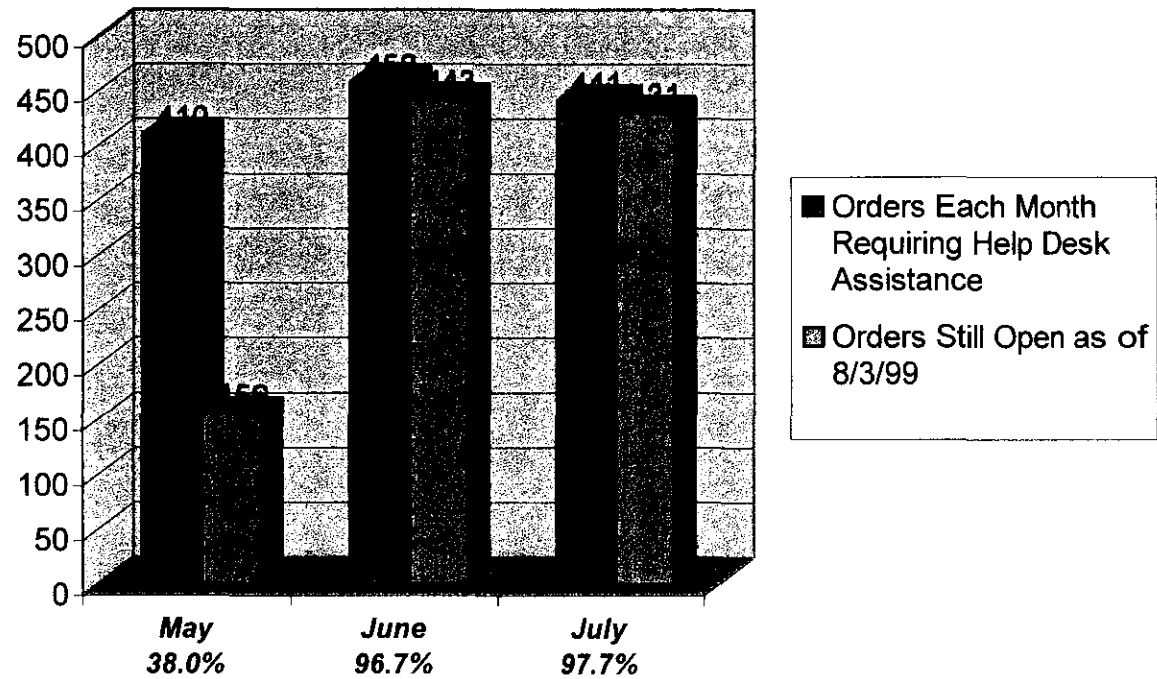
Cumulative To Date Orders Placed Requiring Help Desk Assistance



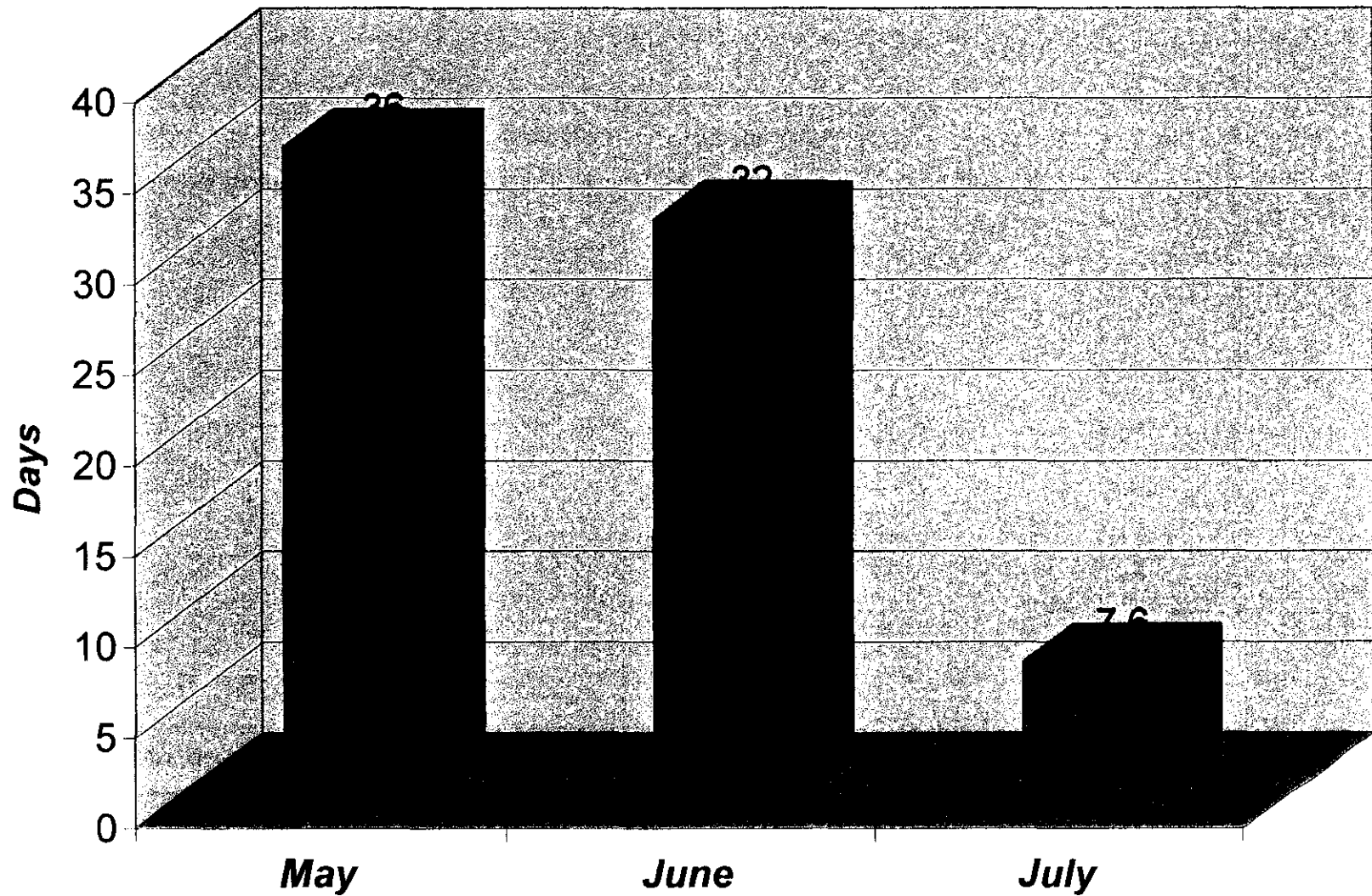
Monthly Orders Placed Requiring Help Desk Assistance



**Orders Sent in Each Month Requiring Help Desk Assistance
That Remain Open at 8/3/99**



Average Days to Close Ticket



STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of New York Telephone
Company for Approval of its Statement
of Generally Available Terms and
Conditions Pursuant to Section 252 of
the Telecommunications Act of 1996
and Draft Filing of Petition for
InterLATA Entry Pursuant to Section
271 of the Telecommunications
Act of 1996

Case No. 97-C-0271

BRIEF OF AT&T COMMUNICATIONS OF NEW YORK, INC.

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DATED: NEW YORK
August 17, 1999

I. INTRODUCTION AND STATEMENT OF LAW

On April 23 of this year, Administrative Law Judge Eleanor Stein issued a ruling in this proceeding setting forth the legal principles governing this investigation:

[T]he ultimate burden of proof rests with Bell Atlantic-NY to demonstrate that the New York State local exchange market is irreversibly open to competition. Bell Atlantic-NY must demonstrate, by a preponderance of the evidence, that it has fulfilled its commitments under the Pre-Filing Statement ["PFS"] and is currently furnishing or ready to furnish each checklist item, under a specific legal obligation, in the quantities that competitors may reasonably demand, at an acceptable level of quality.¹

Judge Stein's ruling is fully consistent with numerous FCC rulings that a BOC bears the ultimate burden of proof of demonstrating by a preponderance of the evidence that it has satisfied each of the Section 271 standards. E.g., Ameritech Michigan Order, ¶¶ 44-45. The FCC's rules also require that BA-NY must demonstrate current compliance with each and every checklist item. Paper promises with respect to the future are insufficient and will be rejected. Ameritech Michigan Order, ¶¶ 55, 179; BellSouth South Carolina Order, ¶ 38.

To satisfy its Section 271 obligations and its commitments under the PFS, BA-NY must also demonstrate that its provisioning of access to interconnection and UNEs is not discriminatory. This requires a showing that the quality of interconnection and UNEs that BA-NY provides, as well as the access thereto, is at least equal in quality to that which BA-NY provides to itself. Local Competition Order, ¶ 312. This showing of parity is required for each and every checklist item. Parity is also at the heart of the requirement that BA-NY demonstrate that the market is **irreversibly** opened to competition. Indeed, as this Commission's own experience in Rochester confirms, lack of competitive parity in systems and processes can quickly destroy the competitive experiment. Moreover, BA-NY cannot satisfy Section 271 by claiming that at-parity treatment in certain areas, and offsets below-parity treatment in other areas, and its performance must support all entry strategies. Local Competition Order, ¶ 12 ("Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy").

¹ Ruling Granting AT&T's Motion in Part, Denying it in Part, and Clarifying Issues concerning Technical Conferences, p. 1.

BA-NY must support its claim that it is providing nondiscriminatory access and parity service with detailed and accurate performance data. Ameritech Michigan Order, ¶ 138. Failure to provide such data constitutes a failure of proof with respect to the checklist item or PFS commitment involved. Performance data showing a lack of parity are, of course, also evidence of failure. Further, the PFS contains specific, detailed BA-NY commitments to provide particular performance data; thus, BA-NY's failure to satisfy those commitments is an independent failure to satisfy the conditions of the PFS.

Finally, in addition to the Section 271 requirements, BA-NY has committed to meet several specific PFS obligations. In his April 8, 1998 letter to Deputy Chairman Helmer relating to the Pre-Filing Statement, Chairman O'Mara stated that he would recommend that BA-NY be permitted to enter the long distance market only : "[i]f BA-NY meets all of the steps outlined in its Statement – with the New York State Department of Public Service and the Department of Justice signing off on each condition. . ."² Some of the PFS commitments are inherent in or simply flesh out BA-NY's Section 271 obligations. Others are unique to the agreement BA-NY struck with Chairman O'Mara. Nevertheless, Chairman O'Mara conditioned his recommendation on specific findings by this Commission and the Department of Justice that BA-NY has satisfied each condition in that document. To date, BA-NY has failed to fulfill significant portions of its PFS commitments, including collocation, IDLC loops, coordinated hot cuts, reporting of all the performance data required by the Commission in the carrier to carrier ("C2C") proceeding, pre-order response time, and provision of a parsed CSR. Under the express terms of former Chairman O'Mara's letter, BA-NY does not earn this Commission's support for its Section 271 application until it fulfills "each" of these PFS commitments.

Under the Commission's close guidance, BA-NY has made significant progress towards satisfying some of the above obligations. However, the record here clearly shows that there is no remotely colorable claim that BA-NY has met many of its obligations under the checklist and its specific commitments in the PFS. The current failures are numerous, substantial and competitively significant.

² Letter of Chairman John F. O'Mara to Hon. Maureen O. Helmer, April 6, 1998, p. 1 (emphasis in original).

We will not address each and every checklist item and PFS commitment in this brief.³ We will, however, show that many critical problems remain to be resolved and that these failures threaten the potential for, and the survival of, local competition in New York.

We first discuss the broadest concerns, BA-NY's C2C metric reports. We will review the deficiencies in those reports and the implications of those deficiencies for BA-NY's ability to satisfy its burden of proof and to meet its PFS commitments. Moreover, even the limited metric data that BA-NY has filed prove on their face that BA-NY is not providing interconnection and access to UNEs at parity. That failure is, by itself, conclusive.

Next we will turn to other major areas of concern, including BA-NY's provisioning of "hot cut" local loops – the principal method by which competition in the small business market is supposed to occur – and the provisioning of the UNE platform ("UNE-P"), the principal vehicle for residential competition. In each case, BA-NY is not near to provisioning the essential components of these – the two principal competitive entry methods – at anything like parity. In the process, we will identify a number of specific PFS commitments that BA-NY has not proven that it has met, and has not, in fact, met at all.⁴

II. METRICS, PARITY AND BURDEN OF PROOF

A. BA-NY has failed to provide essential data for many critical measurements.

BA-NY has repeatedly failed to provide the performance data that it promised and that this Commission and the FCC have deemed essential for purposes of Section 271. For example, BA-NY committed in the PFS to provide OSS systems "with equivalent functionality to that provided to Bell-Atlantic's retail representatives." PFS at 31. The PFS states further: "Before [BA]-NY will be considered to have met these standards, it will have instituted the performance measures required by the [PSC], and will demonstrate that it is able to generate meaningful performance reports." Id. at 32.

³ The fact that we do not address all Section 271 issues here reflects both our current state of knowledge and the strict limitations placed on our ability to marshal the substantial record in only twenty pages.

⁴ Another critical component of Section 271 and the PFC is the establishment of means to ensure that local markets remain open. BA-NY's failure to address this requirement satisfactorily is covered in AT&T's Petition to Replace BA-NY's Performance Assurance Plan with a Performance Incentive Plan, filed August 13, 1999.

BA-NY has not come close to satisfying this commitment. Attachment A to this Brief lists 89 separate metrics, required by the C2C proceeding, that remain "under development," including critical categories such as LSRC timeliness, order accuracy, missed appointments, offered intervals and installation trouble reports. BA-NY's failure to provide the information in these several dozen categories constitutes both a facial failure to satisfy the PFS and a failure in each case to meet its burden of proof.

BA-NY has also failed to provide data on numerous metrics specifically required by the FCC for a complete Section 271 application. Thus, BA-NY has not provided any data on service order accuracy⁵ despite the FCC's express requirement that such data be included in a Section 271 application. Ameritech Michigan Order, ¶ 212. Instead, these metrics are also "under development" -- even though BA-NY agreed in its PFS submitted 16 months ago (as one of its "critical measures" for determining Section 271 compliance)⁶ to provide this data and even though it assured this Commission that it would begin reporting this measure by April 1, 1999.⁷ Similarly, BA-NY has provided no data on jeopardy notices, even though the FCC has repeatedly stressed the "critical" importance of timely issuance of jeopardy notices to CLECs.⁸ Despite the FCC's repeated holdings that a Section 271 applicant must provide such data,⁹ BA-NY has also failed to report data for its retail operations with respect to several important measurements required by the FCC, including comparative data for its own retail operations regarding the timeliness of firm order confirmations (local service request confirmations), and the timeliness of

⁵ In general, BA-NY tries to substitute timeliness metrics for measures that capture accuracy. As AT&T's data on loop order LSRCs demonstrate, accuracy is not one of BA-NY's strengths. BA-NY consistently provides inaccurate LSRCs and rejection notices, which has significant anticompetitive consequences.

⁶ See BA-NY June 1999 C2C report, p. 2, Metric No. OR-6-01 (stating that metric for "% accuracy -- orders" is "under development"; PFS, App. 5, p. 4 ("completed service order accuracy" is one of the "critical measures for 271").

⁷ NYPSC Order Establishing Permanent Rule, June 30, 1999, Case 97-C-0139 ("NYPSC June Order") Appendix, p. 24. See Att. A for a list of C2C metrics that remain under development according to BA-NY's June C2C report.

⁸ BellSouth South Carolina Order, ¶¶ 130-131; BellSouth Louisiana Order, ¶ 39; BellSouth Second Louisiana Order, ¶ 131. See also FCC Notice of Proposed Rulemaking on Performance Measurements, CC Docket No. 98-56 (released April 17, 1998) ("NPRM"), ¶¶ 62-63.

⁹ E.g., Ameritech Michigan Order, ¶¶ 187, 196; BellSouth South Carolina Order, ¶¶ 117 n.350, 118, 125-126; BA-NY June 1999 C2C reports, pp. 2, 30-31 (providing only CLEC data, and no BA-NY retail data, for metrics regarding order confirmation timeliness (OR-1-01 through OR-1-08), reject timeliness (OR-2-01 through OR-2-06), and flow-through (OR-5-01 and OR-5-02).

rejection notices and order flow-through. Those failures are part and parcel of a broader failure to demonstrate competitive parity, and thus to satisfy the statutory requirement.

B. BA-NY's metric reports are often biased, inaccurate or corrupt.

The FCC has emphasized that performance measurements provided by a BOC must be defined clearly and precisely so that they are not subject to unilateral redefinition or manipulation. See Ameritech Michigan Order, ¶¶ 209, 212.¹⁰ In this proceeding, however, BA-NY has implemented or interpreted many of the C2C performance metrics so as to bias its performance results in ways that materially misrepresent actual performance.¹¹ Moreover, because of the linkages among the metrics, a self-serving interpretation of a given metric can taint the accuracy of performance results on others.¹² For example, BA-NY's unilateral interpretation of the provisioning interval for UNE-P to exclude the sending of a completion notice materially distorts its metric reports by understating its provisioning interval. BA-NY's categorization of hot cut loop orders supplemented by the CLEC because of BA-NY process failures as "customer not ready" is another well-documented example of an interpretation that overstates BA-NY's actual performance.¹³

¹⁰ As the Department of Justice has also observed, "definitional issues and other details connected with the measures themselves (such as the basis upon which due dates and start times are set in particular measures) could significantly affect the meaning of the data." Letter from Donald J. Russell, DOJ, to Liam S. Coonan, SBC Communications, Inc., March 6, 1998, pp. 1-2.

¹¹ See, e.g., KPMG August Report, POP 8, IV-232 (noting that BA-NY, in calculating its order confirmation time, omitted orders as to which it failed to send FOCs for orders that were successfully completed -- a gambit that necessarily "biases the confirmation times downward"); *id.* POP 8, IV-236 (noting that BA-NY's calculations of order confirmation time based upon its first (inaccurate) FOC are necessarily "misleading"); Tr. 4113-14 (noting that, even when BA-NY fails to advise CLECs of a no dial tone condition at least 48 hours in advance of a scheduled hot cut and when such failure results in a postponement of the due date, BA-NY does not score such failures as misses); AT&T April 28 Joint Affidavit, ¶¶ 177-178; Tr. 289-292; Cablevision Lightpath Joint Affidavit, April 28, 1999, p. 8 (noting BA-NY's penchant for aggregating smaller interconnection trunk orders and characterizing these ASRs as a "project," thereby forcing CLECs to negotiate a completion date); KPMG August Report, P8-1.2, POP 8, IV-232-3, 234 (noting that, because BA-NY's Sentinel system only emulates transactions and because emulated transactions are not selected randomly from "an exhaustive, or even representative list," the "unknown and indeterminate differences between the actual transactions and the emulated ones could cause these [preordering] metric values to be misrepresented"); *id.* POP 8, IV-237 (noting that the metrics on rejection intervals are flawed because "orders that are never completed are not considered").

¹² See, e.g., AT&T April 28 Joint Affidavit, ¶ 179 (noting that BA-NY's aggregation and characterization of individual ASRs for interconnection trunks as "projects" not only distort BA-NY's trunk completion data, but also conceal its actual performance on FOCs).

¹³ As the Commission is fully aware, every single BA-NY report on hot cut loop provisioning has failed to survive staff review, and BA-NY was forced to abandon its hot cut provisioning claims for periods prior to June 21. See Letter from Randal Milch to Andrew Klein (June 18, 1999).

BA-NY's C2C reports during 1999 have consistently reported that BA-NY is meeting the absolute standards with respect to pre-ordering response times. See, e.g., June 1999 C2C report (reporting CLEC response times for various pre-ordering functions ranging from 1.71 seconds to a maximum of 5.46 seconds, including 3.10 seconds for retrieval of a customer service record ("CSR")).¹⁴ Its data, however, are not accurate indicators of actual CLEC response times, because, inter alia, they reflect only the pre-ordering response times on its EIF system -- not on EDI.¹⁵ By contrast, the testimony of MCI and Community Networks, the only current users of the EDI pre-ordering interface, showed that response times on EDI are dramatically higher than those described in BA-NY's C2C data.¹⁶

Because numerous metrics have been implemented or interpreted by BA-NY in ways that can skew performance, the performance data on which BA-NY has so heavily relied to support its Section 271 application cannot be deemed to provide an accurate assessment of performance.¹⁷ Yet, as discussed below, it is astonishing that even BA-NY's distorted and biased reports still do not hide the fact that BA-NY has not yet come close to demonstrating parity in many critical areas.

¹⁴ BA-NY June 1999 C2C Report, p. 1 (Metric Nos. PO1-1- 01 through PO1-1-05).

¹⁵ See Second BA-NY Update Affidavit of Julie A. Canny, et al., July 22, 1999, ¶¶ 14-16. BA-NY acknowledged that the EnView ("Sentinel") system that it had been using for measuring pre-ordering response times has still not been programmed to run EDI simulations. Instead, BA stated that it is using ECXpert to provide "actual CLEC transactions" for the months of June and July 1999 -- even though such data "will not be an exact copy" of BA-NY's own retail operations (which will be measured by EnView) and will not measure the entire period from the sending of a request to receipt of a response. Id.

¹⁶ Average response times for CSR retrieval range from 20 to 30 seconds, and during peak periods the actual response time for this function can be as long as 90 seconds. For other pre-ordering functions, response times average 22 seconds, but Community has sometimes been forced to wait 60 seconds for a response. See Tr. 3447-48 (Sivori), 3449-50 (Hou). These times are vastly greater than those experienced by BA-NY's own retail operations (which, according to the latest C2C report, range from .08 second for CSR retrieval to 1.82 seconds for telephone number availability/reservation).

¹⁷ The CLECs' ability to discern the precise contours of the definitions that BA-NY is relying upon when calculating its results has also been hampered by the fact that BA-NY's C2C reports do not contain detailed footnotes identifying precisely when data for a given month reflect definitional changes to the metrics -- information the Commission has now directed BA-NY to provide retroactively for its C2C reports from January through May 1999. See NYPSC June Order, p. 63. In any event, BA-NY's performance results cannot be deemed to capture a complete and accurate assessment of its performance until, inter alia: (1) BA-NY retroactively restates its results in compliance with the NYPSC's June Order; (2) the parties have had an ample opportunity to re-examine key metrics so that issues regarding metric imprecision and definitional differences are fully resolved; and (3) BA-NY supplies a complete set of performance data required by the FCC and this Commission demonstrating that it has achieved stable performance by meeting parity and absolute standards for at least three consecutive months.

C. BA-NY's C2C reports show systemic discrimination against CLECs.

Notwithstanding the strong biases in BA-NY's own reports, those reports show an astonishing record of failure. Attachment B to this brief shows 14 metric categories where BA-NY failed to meet established absolute standards. In 10 of those cases, BA-NY failed to satisfy the metric for at least two of the past three months. Attachment C shows an appalling 63 metric categories where BA-NY failed to meet the parity standard in at least one of the past three months. In at least 47 of these cases, BA-NY was materially out of parity for at least two of the past three consecutive months, and in 40 cases, BA-NY reports out of parity provisioning for June, the most recently reported month. In each of these cases, the z score was worse than -1.645 , indicating a 95% probability of a lack of parity. Moreover, these admitted out of parity reports include many key metrics, including provisioning intervals and missed repair appointments.

The Staff's recent application of the proposed Performance Assurance Plan ("PAP") penalty provisions to BA-NY's reported data, provided here as Attachment D, provides further evidence of just how far BA-NY is from being able to demonstrate that it is satisfying its checklist and PFS obligations. The PFS states (at 35) that: "Bell Atlantic-NY recognizes that its performance in twelve particular categories is critical to the CLECs' ability to compete in New York."¹⁸ Exhibit D (which, like BA-NY, reports on only 11 of the 12 metrics¹⁹) demonstrates that BA-NY failed at least 4 of the 11 metrics in each of the last three months, more than 35%, and it failed to provide parity for 4 of these 11 metrics for the past two consecutive months. In total, BA-NY failed to meet the applicable standard for 8 of the 11 metrics in at least one of the last three months.

Staff's analysis of BA-NY's metric reports also examines metrics by mode of entry. In the critical UNE category – the category that includes both the UNE Platform and UNE loops- BA-NY failed on not less than 26% of the associated measures in April, 33% in May and 34% in June. Thus, not only is BA-NY's performance far below parity, but it is consistently below parity and it is getting even worse. In

¹⁸ AT&T does not agree that these 12 are the only critical metrics, but they are certainly among them.

total, as Staff calculates it, BA-NY's performance metrics for the most recent three months are so poor that, had the PAP been effective, BA-NY would be liable for penalties of not less than \$26,000,000.

BA-NY's own data, biased seriously in its own favor, are fatal to its current application. The Commission cannot simultaneously find that BA-NY's performance was so out of parity as to require the payment of tens of millions of dollars in penalties, and on the same record evidence conclude that BA-NY has carried its burden of proving that it is satisfying its checklist obligations under the very same parity standards. The two positions are logically inconsistent.

III. BA-NY CANNOT PROVISION HOT CUTS

Simply stated, BA-NY cannot provision hot cuts. No issue has been more thoroughly investigated and no fact more conclusively proven. BA-NY has never provisioned hot cuts at anywhere near parity or a competitively reasonable standard -- not for any month or even any week. BA-NY cannot provision loops largely because it will not follow processes or provide accurate information.

The provisioning process begins with the submission of a Local Service Request ("LSR") by the CLEC and the return of a Local Service Request Confirmation ("LSRC"), which is supposed to confirm the information provided by the CLEC and provide important information to be used in the provisioning process, including the telephone number, the cable and pair information, and the cutover date. As part of the new provisioning process agreed to in March, BA-NY committed to providing an accurate LSRC that included, inter alia, the due date, the telephone number, the cable and pair, and the TXNU (the BA-NY circuit identifier). Tr. 4105-07 (Meek). Yet, the uncontroverted evidence is that BA-NY provided inaccurate or incomplete LSRCs 50% to 60% of the time for each of the four weeks beginning June 21 through July 16, and for each of the four full calendar weeks during July, 62%-64% of the hot cut loop LSRCs that BA-NY returned were incorrect or incomplete.²⁰

¹⁹ As noted above, the service order accuracy metric is still "under development."

²⁰ See July 27 Meek Aff., Exh. 8A-8D (Confidential) (showing via hard copies of the actual incorrect LSRCs that 50-60% of the hot cut LSRCs returned to AT&T were inaccurate); Tr. 3955-3956 (Maguire) (conceding that BA-NY's own "sample" data show an LSRC hot cut accuracy rate of only about 60-70%); August 16 Meek Aff. and Atts. 1-2, 1-2 Confidential. LSRC accuracy is, of course, a "critical measure" under the PAP.

Faulty LSRCs cause unnecessary customer “supps” that (1) delay customer provisioning, (2) create customer dissatisfaction with the CLEC and (3) cause the CLEC to incur needless additional provisioning expense. Staff's August 13th data reconciliation analysis confirms that BA-NY's incorrect LSRCs are a major cause of supps. Needless supps also cause premature cuts by BA-NY because BA-NY cannot handle supps well. Premature hot cuts put customers out of service.

BA-NY's continued inability to follow the hot cut provisioning process that it agreed to is remarkable, because BA-NY touted this very process to the Commission as the solution to its previous hot cut provisioning failures. See e.g., BA-NY April 24 Joint Aff. ¶ 147. Yet the record is clear that BA-NY frequently either fails to perform the due date minus two day dialtone test before noon on DD-2 (see Exh. 11 of July 27-30 Technical Conference, p. 3 of 5) or to provide timely notice of the result of that test on DD-2. Tr. 4083-84, 4094-96 (Meek). If a problem is found at that time, then it may be possible for AT&T and BA-NY to resolve the problem in time to carry out the coordinated hot cut as scheduled. But BA-NY frequently does not perform the test on DD-2, or at least does not inform AT&T of problems identified in that test on a timely basis on DD-2.

BA-NY also frequently fails to make the required telephone call one hour prior to the scheduled hot cut. Tr. 4085 (Meek). This call permits AT&T to stop a cut if it determines that something is wrong or if the customer is not ready, but frequently BA-NY performs the hot cut without notifying AT&T in advance. Indeed, premature cuts that put a customer out of service would not occur if the DD minus one hour call were made because the cut would be stopped at that time. Tr. 4091 (Meek). BA-NY also often fails to provide the confirming telephone call to indicate that the cutover has been completed, which means that the number may not be ported at the appropriate time. Tr. 4085 (Meek).

These process failures are dramatically illustrated in Exhibit 9 of July 27-30 Technical Conference, BA-NY's own checklists. These checklists – prepared by BA-NY personnel – clearly document BA-NY's consistent failure to follow the agreed-upon processes, including the before noon dial tone check on DD-2, the timely notice on DD-2 of problems occurring in the test, the confirmation call one hour before the cutover, and the confirmation call upon completion of the hot cut. Tr. 4109-23

(Meek).²¹ It is noteworthy in this regard that BA-NY neither challenged Mr. Meek's testimony on cross examination nor offered rebuttal evidence to show that it was, in fact, following the required processes. Mr. Meek's fully documented analysis of BA-NY's performance for July 19-23 shows that even when BA-NY provided loops that worked, it failed to follow the explicitly defined process for half of the hot cut loop orders that it attempted to cutover to AT&T. August 16 Meek Aff. and Attchs. 1 and 1 Confidential.

Another recurring problem has been the need to "supp" an order to a later date. KPMG determined that almost 40% of the supps were caused by BA-NY. Tr. 3883, 3933-35 (McDonald). But neither that figure nor BA-NY's inflated performance reports captures the degree to which BA-NY is responsible for supping orders. If BA-NY fails to follow the agreed-upon procedure, and as a result, an order has to be supped out to a later date, that process failure should be reflected in the reporting results. At present, however, BA-NY often does not count those failures as "misses" for reporting purposes but rather will identify the reason for the change in date as "customer not ready" or "cancelled." See Exh. 9. Until the reporting system captures these process failures as "misses" and reflects them in the performance data reported to the Commission and CLECs, BA-NY will have no incentive to improve its performance, and it will continue to cite its meaninglessly inflated performance claims.

As a direct consequence of these failures, BA-NY continues to provision loops abysmally. For the five weeks beginning June 21, the fully documented evidence submitted on the record in this proceeding by AT&T shows that BA-NY continues to cause severe customer service disruptions, including loss of dial tone, at totally unacceptable levels: 15 percent, 17 percent, 8 percent, 14 percent and 13 percent respectively of the hot cut loop orders that BA-NY actually attempted to cut over to AT&T resulted in loops that did not work due to BA-NY's provisioning errors. July 27 Meek Aff.; Exhs. 8, 8A-8D, 8A Confidential-8D Confidential, Supplements to Exhs. 8D and 8D Confidential, August 16 Meek Aff. and Atts. 1 and 1 Confidential. This error rate is similar to the rate experienced by AT&T in

²¹ One reason BA-NY failed to conduct the before noon on DD-2 dial tone test on a timely basis is that its implementation materials sent to all technicians and field personnel at the time of the commencement of the new provisioning procedures

the first four weeks of the revised coordinated hot cut process.²² AT&T April 28 Joint Affidavit, ¶¶ 141-44, Att. 2; Exhs. 8E, 8E Confidential. Indeed, AT&T's evidence has consistently shown provisioning error rates of 10-20% during the five months since commencement of the new provisioning process in March. BA-NY has never once provisioned hot cuts at a commercially acceptable level for even one week.

Failure to check for dial tone at DD-2 also causes BA-NY routinely to fail to provision loops served on Integrated Digital Loop Carrier within the prescribed interval.²³ AT&T data show numerous and persistent late IDLC notices from BA-NY that cause the provisioning to be delayed. AT&T has also fully documented customer loss of service caused by BA-NY's IDLC provisioning errors. BA-NY's inability to provision IDLC correctly is a failure to meet the express PFS commitment that "[a] change [from IDLC] to other existing plant to provide this CLEC service [the provisioning of a UNE loop] will have no impact on the Public Service Commission-established interval." PFS at 26.²⁴

Not only does BA-NY fail to provision loops correctly, but it also consistently and deliberately misreports its own performance. BA-NY recanted all of its hot cut performance claims for the period prior to June 21. Currently, however, its reported performance data are just as biased and inaccurate as the disavowed pre-June 21 claims. First, BA-NY's "on-time" performance claims in its July 1 and July 23 affidavits still take no account of whether the hot cut was provisioned accurately or resulted in a customer outage. Tr. 3964 (Maguire). Second, the reconciliation process conducted during the July 27-30 Technical Conference made clear that BA-NY can easily massage the performance data as a result of the wide discretion BA-NY has in classifying individual hot cut situations, particularly in the treatment of

called for the test to be conducted on DD minus one. Tr. 3983-91 (Rosenzweig); Exhs. 10, 11.

²² Indeed, in this proceeding, AT&T and BA-NY agree that the standard for determining a successful coordinated hot cut should be the customer experience and whether the cutover transferred the customer without service interruption. Tr. 3966 (Maguire); BA-NY April Joint Aff., ¶ 148. Yet, BA-NY has unabashedly sought to avoid the Commission's considered evaluation based upon that logical marketplace standard.

²³ It warrants emphasis that IDLC identification should occur earlier during BA-NY's assignment (e.g., check for facilities availability) phase of the provisioning process.

²⁴ BA-NY has been tacitly vying for a waiver of this commitment when it has argued that IDLC loops are "only" 9% of the local loops in the state. Nine percent is still 1,000,000 local loops. Equally important, IDLC loops are overwhelmingly used by business customers, and they make up approximately 20% of business customer loops.

rescheduled “supps.” Many hot cut orders that were “supped” to a later date as a result of BA-NY's failure to follow the hot cut process (e.g., failure to conduct DD-2 dialtone testing) were not classified by BA-NY as a “miss” for reporting purposes, but rather as a “customer not ready” situation that would not be reflected as a “miss” in the metrics.

A combination of bad reporting systems, unsustainable interpretations of the metric reporting requirements and a disquieting disregard for the facts known to its own most knowledgeable employees produces reports that lack all credibility. Yet, astonishingly, BA-NY's own grossly overstated C2C performance data demonstrate that BA-NY is still not meeting its statutory obligations with respect to the ordering process for UNEs. BA-NY's own performance data from April through June 1999 show that it has failed to meet the absolute standards for UNE POTS order confirmation timeliness, and that its otherwise subpar performance has declined steadily since April.²⁵ In addition, although BA-NY claims that it is provisioning loops in a timely and quality manner, its performance results belie this assertion. From April through June 1999, the average delay days for missed UNE POTS orders were consistently higher for CLECs than for BA-NY's retail customers; and BA-NY's z-scores ranged from -2.88 to -5.86.²⁶ See Att. C (listing examples of metrics from April-June C2C reports showing out-of-parity conditions, including PR-4-02 (UNE)).²⁷

²⁵ See Attach. B (listing metrics from BA-NY's April – June C2C reports showing BA-NY's failure to meet absolute standards, including BA-NY's failure to meet the 95% standard for on time UNE LSRCs ≥ 10 lines and BA-NY's declining LSRC timeliness performance from 89.47% in April to 85.41% in May to 82.88% in June (OR-1-06)).

²⁶ BA-NY's poor performance with respect to loops is not confined to provisioning. In May and June, a greater percentage of network troubles reported by CLECs were out of service for longer than 12 hours than those reported by BA-NY's retail customers; and BA-NY's z-scores for those months were -6.04 and -4.88, respectively. *Id.*, MR-4-07.

²⁷ BA-NY cannot take comfort from KPMG's report on the coordinated hot cut process. The closure of Exception 54 was one of the instances where KPMG simply stopped testing and did not conclude that the problems had been satisfactorily resolved. Tr. 3870 (Weeks). Moreover, the due date minus 2 testing was determined to be beyond the scope of the retest, Tr. 3863 (McDonald), but KPMG still reported that BA-NY was not following this agreed-upon procedure: “BA-NY is not strictly following its timeline for pre-wire and coordinated provisioning activities up to two days before frame due time. KPMG believes that if these timelines are not followed strictly, trouble-shooting efforts can be hindered and potential provisioning problems can result.” KPMG August Report Test Cross Reference P3-22. In its retest of frame due time activities, all KPMG determined was that BA-NY when under observation by KPMG personnel as part of a test would generally follow the established procedures. It is hardly surprising that BA-NY's errors increased the week after KPMG left the scene. See Exh. 8, 8A-8D, 8A Confidential-8D Confidential. KPMG also held BA-NY responsible for missed due dates 40% of the time including, specifically, when IDLC loops were not identified until the due date, further confirming that BA-NY has not met its PFS IDLC loop provisioning commitment.

AT&T and other carriers intend to use UNE-loops as their principal market entry strategy to provide service to small and medium-sized businesses in New York. Indeed, the CLEC industry was largely driven to this outcome by Commission policy restricting the availability of the UNE-Platform for certain categories of service and in certain critical geographic areas. The Commission was persuaded to adopt this policy in substantial part in reliance on BA-NY's sworn testimony that it could reliably provision hot cuts at commercial volumes. CLECs, including AT&T, accepted the Commission's challenge, investing hundreds of millions of dollars in switches and collocated cages. Now, BA-NY has wholly failed to meet its commitment.

IV. BA-NY HAS NOT PROVIDED NONDISCRIMINATORY ACCESS TO DIRECTORY ASSISTANCE AND DIRECTORY LISTINGS

A. AT&T's Data Show That More Than 10% of Orders to Migrate a Directory Listing "As Is" Upon Cutover of a UNE Loop Are Not Provisioned by BA-NY

BA-NY is losing far too many directory listings for UNE-L hot cut orders. At the Technical Conference, AT&T presented the results of a study it conducted to assess BA-NY's performance in provisioning directory listings associated with UNE LNP orders.²⁸ The study showed that 11 of the 103 orders -- almost 11 percent -- were not provisioned (i.e., the customer's directory listing had dropped out of the ATLAS database and could not be obtained from 411) as of three or more business days after loop cutover and remained unprovisioned for the duration of the study period.²⁹ Connolly/Callahan Aff. ¶ 7; Tr. 4146.

²⁸ AT&T monitored 103 directory listing orders associated with coordinated hot-cut loops that were completed between July 1 and July 15, 1999. Each of these orders sought the migration "as is" of the customer's existing published BA-NY listing and therefore was placed, consistent with BA-NY's business rules, through a "Z" indicator on the loop order. Joint Supp. Aff. of T. Connolly & R. Callahan (July 27, 1999) ("Connolly/Callahan Aff."), ¶¶ 3, 6; Tr. 4143-44.

²⁹ In its August 3, 1999 Technical Conference Summary, BA-NY claims that AT&T's data concern "only 11 of 340 orders." (Id. at 4.) This assertion completely distorts the record. AT&T eliminated from its study those orders (whether properly provisioned or not) for which it had no BA-NY CSRs in order to ensure the accuracy of its data. This results-neutral scrubbing resulted in a smaller but more robust study base. If all orders had been included in the study, there would have been proportionately more failures. Indeed, AT&T also presented data on nine additional orders placed during the same period that were unprovisioned for a minimum of two weeks and completed only after escalation. Connolly/Callahan Aff. ¶¶ 8-9; Tr. 4150-53.

BA-NY has not rebutted any of these data, for which AT&T provided the underlying documentation prior to presenting its results.³⁰ BA-NY's performance in this area is completely unacceptable. Directory listings have a direct and significant effect on the small business customers that AT&T serves through UNE LNP. A rational business would think twice before risking migrating its service from BA-NY to AT&T if it knew that there was a material chance that it would lose its directory listing, for days or longer, after the change.³¹ Dropped listings also impose substantial monitoring and escalation costs on CLECs. Tr. 4146-55.³²

B. The Manual Changes and Software Modifications Implemented by BA-NY Do Not Prevent the Dropped Listings Identified by AT&T

In its Response to KPMG's Exception 56, BA-NY identified two sources of error in its provisioning of directory listings associated with UNE LNP orders: "human error" and "the sequence of the orders completed." BA-NY 7/7/99 Resp. to Exception 56 ("BA-NY Resp.") at 2.³³ Both of these sources of error result from the unsuitability of BA-NY's systems for operating in a wholesale environment. Human error occurs because directory listing orders -- even those seeking no change in the end-user's existing listing -- do not flow through, although they could if BA-NY did not have such difficulty provisioning the associated loop orders. Tr. 4024-25.

³⁰ See AT&T Confidential & Proprietary Documentation Relative to Testimony on Directory Listing Issues, filed with the Commission on July 27, 1999.

³¹ Moreover, if a customer is out of the directory listing database when the white or yellow pages goes to press, it will have no listing in the telephone book for an entire year. Tr. 4147-4148.

³² KPMG's closure of Exception No. 56 indicates that no further retesting would be conducted and did not report that KPMG was satisfied with the result. Indeed, the closure was in part premised on further testing being conducted by the Commission Staff. Moreover, KPMG did not actually retest BA-NY's systems by sending directory listing orders through its test bed accounts, but instead only reviewed BA-NY's work with respect to 39 CLEC orders and a sample of 89 CLEC listing orders tracked by the CLECs themselves. KPMG found three errors in the 39 audited orders (a 7.7% error rate), and CLECs reported 28 failures in the 89 CLEC orders (a 31.5% failure rate). KPMG discounted some of the CLEC-reported failures on the ground that the customer "was found to be correctly listed by KPMG" (Closure Rep. at 2), but an ex post check by KPMG does not prove that the listing had not at some earlier time been dropped. The most that can be concluded from the superficial review described in the Closure Report is thus that errors still occur at indeterminate levels. Likewise, the "interim accuracy" data shown in BA-NY's Response to Exception 56, which KPMG did not evaluate (Tr. 3917), confirm that errors continue to occur. The "% Accuracy (after final review)" figures show no more than that, to the extent BA-NY finds an error, it eventually fixes it after some undefined period of time. BA-NY Resp. at 5; see also Tr. 4032-35.

³³ The order sequencing problem occurs because a "D" (Disconnect) order, required to release the customer's facilities, is sent downstream to the directory listing system. This removes the customer's listing data from the directory listing database. BA-NY Resp. at 3; Tr. 4016-17. If an "R" (Record) order, required to restore the listing to the database, precedes the "D" order in the listing system, the customer's listing will be removed from the database indefinitely. BA-NY Resp. at 3. BA-

To address these two sources of error, BA-NY claims to have implemented as of June 14, 1999 three categories of change: first, "refresher training" in the TISOC; second, "software modifications" to prevent improper order sequencing; and third, "manual checks" by two "quality assurance teams." BA-NY Resp. at 2-5. AT&T's data for July 1 through July 15 show, however, that these changes are ineffective to prevent a greater than 10% failure rate because they neither rectify the underlying limitations in BA-NY's systems nor audit results after the second day following completion. BA-NY's changes do not resolve the underlying causes of listing drop-outs because they are almost entirely manual, and as a result are reversible, unavoidably subject to human error, and difficult or impossible to scale to increased volumes of orders.³⁴ The modifications also fail to address the disappearance of directory listings from the database five to seven days after completion of the associated loop order, which is when AT&T data show dropped listings are most likely to occur. Tr. 4145. The last of BA-NY's "manual checks" occurs two days after completion. BA-NY has no procedures in place to identify or restore listings dropped after that date. Id. 4029-31. BA-NY's failure to catch the dropped listings identified by AT&T's study illustrates the inadequacy of BA-NY's "manual checks."

V. BA-NY FAILS TO PROVIDE PARITY ON UNE-P ORDERS

BA-NY does not provision the UNE-Platform ("UNE-P") in a commercially reasonable manner and at parity with BA-NY retail operations. This fact is confirmed by BA-NY's own performance reports, by the results of AT&T's carrier-to-carrier testing, and by KPMG's Final Report.

BA-NY's performance reports for the months of April, May, and June 1999 provide devastating and uncontradicted proof of BA-NY's failure to offer the UNE-Platform to CLECs at parity. During the second quarter of 1999, BA-NY completed orders for its retail customers in shorter intervals than BA-NY completed CLEC orders for UNE-P, resulting in z-scores that showed an extreme and certain lack of

NY has not modified its systems so as to prevent the "D" order from reaching the listing system, although such a modification is possible and would eliminate the risk of a dropped listing. Tr. 4017-18.

³⁴ To prevent improper sequencing, a human being must enter no completion date in the appropriate field on the "R" order Tr. 3905-06, 3920, 4022-23. BA-NY has not considered eliminating this manual step through a software modification. Id. At 4023-26.

parity. See Att. C. BA-NY failed to provide UNE-P at parity in the crucial 1-to-5 line order segment, for dispatch orders. See id. During the second quarter of 1999, BA-NY offered average intervals to its retail customers that were shorter than the average intervals that BA-NY offered to CLECs ordering UNE-P, resulting in z-scores that again showed a lack of parity. See id. The lack of parity again impacted the 1-to-5 line order segment, for dispatch orders. See id.

AT&T's carrier-to-carrier testing data also show that BA-NY does not make UNE-P available in a commercially reasonable manner. See Supplemental Affidavit of Ray Crafton of August 16, 1999 ("Crafton August 16 Supp. Aff."). As with UNE-Loops, BA-NY's failure is fundamentally a failure of process. BA-NY does not consistently provide all electronic notifications necessary to manage a UNE-P order placed via the EDI interface.³⁵ See id. ¶¶ []. BA-NY routinely fails to provide all "life cycle elements" that are part of an order and almost always fails to provide the "life cycle elements" on time and in the proper sequence. See id. ¶¶ []. BA-NY routinely fails to return completion notices — a failure that severely impedes AT&T's ability to bill its retail and access customers — and its performance is getting worse, not better. See id. ¶¶ []. AT&T's testing shows further that BA-NY returns a steady stream of invalid and spurious EDI error messages on UNE-P orders — error messages that should not be returned because the orders are valid — and that these spurious error messages appear to be the consequence of systemic defects in BA-NY's systems rather than isolated problems. See id. ¶¶ []. These spurious error messages result in significant provisioning delays for customers and hold AT&T UNE-P orders captive to BA-NY's unresponsive and backlogged Help Desk. See id. ¶¶ [].

Finally, KPMG confirmed that "BA-NY does not deliver service at parity." KPMG August Report, POP8, IV-221, IV-243. KPMG reached this conclusion after conducting extensive statistical tests of the provisioning metrics on completion and offer intervals and after considering the conceivable exogenous factors that could affect performance results. Id. This finding undercuts any BA-NY claim

³⁵ As AT&T has shown in various submissions, critical EDI notifications are the acknowledgment, the local service request confirmation, the standard error message, and the completion notification. See, e.g., Crafton August 16 Supp. Aff., ¶¶ []. In the context of mass commercial markets, it is essential that BA-NY provide these basic "life cycle elements" of an EDI order on time and in the proper sequence. See id.